

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

JULIE DERMANSKY,

Plaintiff,

- against -

GRAY TEVELEVISION GROUP, INC.

Defendant.

Docket No. 7:18-cv-00240

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Julie Dermansky (“Dermansky” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant Gray Television Group, Inc. (“Gray” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of Sue and James Franklin of Balmorhea, Texas owned and registered by Dermansky, a professional photographer. Accordingly, Dermansky seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in Texas, and the conduct that gave rise to this action occurred in this judicial district.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Dermansky is a professional photographer in the business of licensing her photographs to online and print media for a fee having a usual place of business at 2357 Cours Carson Street, Mandeville, LA 70448.

6. Upon information and belief, Gray is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 4101 E. 42nd Street, Suite J7, Odessa, TX. 79761. Upon information and belief Gray is registered with the Texas Department of State Division of Corporations to do business in the State of Texas. At all times material, hereto, Gray has owned and operated a CBS-affiliate Television station, KOSA-TV CBS 7, and its website located at the URL: <https://www.cbs7.com> (the “Website”).

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff’s Ownership of the Photograph**

7. Dermansky photographed Sue and James Franklin of Balmorhea, Texas (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. On November 23, 2018 Dermansky published the Photograph in a web article entitled *In Southwest Texas, the Fracking Industry Encroaches on Small Towns, Remote Wilderness, and Clear Skies*. See URL: <https://www.desmogblog.com/2018/11/23/southwest-texas-permian-fracking-alpine-balmorhea-big-bend>. Dermansky’s name was featured as the author of the article, and in a © watermark on the Photograph identifying her as the photographer of the Photograph. Screenshot of the article are attached hereto as Exhibit B.

9. Dermansky is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph was timely registered with the United States Copyright Office and was given registration number VA 2-130-242 under the photograph titled “*11.23.2018 Franklin.jpg*,” effective December 10, 2018. See Exhibit C.

**B. Defendant’s Infringing Activities**

11. On or about November 24, 2018, Gray ran an article on the Website entitled *In Southwest Texas, the fracking industry encroaches on small towns and remote wilderness*. See URL <https://www.cbs7.com/content/news/In-Southwest-Texas-the-fracking-industry-encroaches-on-small-towns-and-remote-wilderness-501177291.html>. The article featured the Photograph. A true and correct copy of the article and a screenshot of the Photograph on the article are attached hereto as Exhibit D.

12. Gray used the Photograph as the banner image of the article such that the Photograph is the primary image displayed when the article is shared on social media outlets, such as Facebook, to generate interest in the article and generate page views. See Exhibit E.

13. Gray did not license the Photograph from Plaintiff for its article, nor did Gray have Plaintiff’s permission or consent to publish the Photograph on its Website.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)**  
**(17 U.S.C. §§ 106, 501)**

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.

15. Gray infringed Plaintiff’s copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Gray is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

19. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

20. Plaintiff further is entitled to her attorney's fees and full costs pursuant to 17 U.S.C. § 505.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Gray be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;

4. That Plaintiff be awarded her costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505.
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, NY  
December 27, 2018

**LIEBOWITZ LAW FIRM, PLLC**

By: /s/Richard Liebowitz  
Richard Liebowitz  
11 Sunrise Plaza, Suite 305  
Valley Stream, New York 11580  
Tel: (516) 233-1660  
RL@LiebowitzLawFirm.com

*Attorneys for Plaintiff Julie Dermansky*